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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,821	02/28/2002	Charles J. Lantz	L 0102	8631

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 Charles F. Schroeder
 2317 Valleybrook Dr.
 Toledo, OH 43615

EXAMINER

SHRIVER II, JAMES A

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,821

Applicant(s)

LANTZ, CHARLES J.

Examiner

J. Allen Shriver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings/Specification

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “23” has been used to designate both the arm and the back in Figures 6-7. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Reference number “30” shown in Figures 3-4 is not set forth in the Specification. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because in Figure 1, reference number “20” should be changed to “10” to correspond with the Specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 14 is objected to because of the following informalities: In line 2, the word “size” should be changed to “sized”. Claim 2 is objected to because of the following informatics: In

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line 3, the word "the" or "said" should be inserted before the word "side". Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. **Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** In claim 13, line 9, the phrase "a pair of upwardly extending U-shaped metal side channel members back extending forwardly from the rear ..." is unclear and indefinite. Examiner does not understand the "back extending forwardly".

7. Regarding claims 1 and 8, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

8. Claim 7 recites the limitation "the resin back" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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10. **Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Badger (US Patent 4,632,411).** Badger discloses a shopping cart (11) for carriage of merchandise selected for purchase in grocery markets, department stores and the like comprising a wheeled carriage (12), a rectangular basket (13) and an underlying support (29) for said basket included on said carriage, said basket being made of resin (resin is used in plastics) and said support comprising a U-shaped metal channel member extending in bridging relationship across the width of said carriage in support of said basket (See Figs. 4-5); said frame comprises a frame including a pair of U-shaped side channel members (17) spaced across the width of said carriage extending horizontally from the rear end of said carriage to its front end (See Fig. 1), a front bumper block (18) extending across the width of said carriage to which the front ends of said spaced horizontal channel members are secured, said channel member of said support being mounted on said horizontal channel members in upwardly extending bridging relation under said basket between said two horizontal side channel members (See Figs. 1-3); in which a handle (64) is provided at the rear upper edge of said basket extending between the two sides of said resin basket; in which the back of the basket is pivotally supported directly from said handle and arranged for its bottom to be swung forward and upwardly within said basket about said handle.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badger (US Patent 4,632,411).** Badger discloses a shopping cart as set forth above and includes a foldable child seat having a front member at its bottom in pivoted relation with said basket back, said seat having a generally horizontal seat member pivotally supported on said basket front arranged for upward pivotal movement and folding into said basket back, said horizontal seat member having an underlying pivot rod connected to said seat front arranged to limit the movement of said seat back when said seat platform is extended in fully unfolded position, but does not teach wherein the back of the basket is resin. Badger discloses wherein the back of the basket is made from a metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the back of the basket disclosed in Badger out of resin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In this case, the motivation for doing so would have been to reduce the weight of the shopping cart by substituting a resin back for a metal back of the basket.

Regarding claim 8, Badger discloses the shopping cart as set forth above and discloses a separate upwardly extending basket reinforcing channel member (62) each connected to one of the side channels and extending into engagement with the interior of a side of said basket (See Fig. 4 where the channel member is engaged with the interior of a side of the basket), but does not disclose each of said upwardly extending members having a lower end projecting below the channel member to which it is connected and having a separate wheel mounted at the lower end of each of said lower ends. Badger discloses the upwardly extending channel member being attached to another channel member (24) that extends below the channel members and having a

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wheel attached at the lower end. At the time of the invention, it would have been obvious to a person of ordinary skill in this art to combine the two upwardly extending channel members disclosed in Badger, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

Regarding claim 9, Badger discloses an upper cross-brace member (65) extending between said spaced upwardly extending members which engages the rear edges of the bottom of said basket in supporting relation therewith.

Allowable Subject Matter

13. Claims 2-3 and 14-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Regarding claim 14, the prior art does not show wherein each of said interior surfaces of the opposite sides of said basket is provided with a groove oriented and sized to receive in snug fit relation one of said upwardly extending metal channel members. Regarding claim 2, the prior art does not disclose a pair of U-shaped channel members from the rear of said carriage extending upwardly and forwardly from opposite sides of said carriage into said basket in merged reinforcing relation with the opposite interior surface of said side walls of said basket. The prior art shows a tubular member from the rear of the carriage extending along the outside of the basket, and does not show the channel being U-shaped and in merged reinforcing relation with the interior surfaces of the side walls of the basket.

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14. Claim 13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action. Regarding claim 13, the prior art does not disclose a pair of U-shaped channel members from the rear of said carriage extending upwardly and forwardly from opposite sides of said carriage into said basket in merged reinforcing relation with the opposite interior surface of said side walls of said basket. The prior art shows a tubular member from the rear of the carriage extending along the outside of the basket, and does not show the channel being U-shaped and in merged reinforcing relation with the interior surfaces of the side walls of the basket.

Conclusion

15. The prior art made of record in the accompanying PTO Form 892 and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

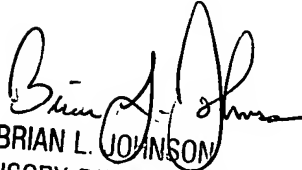
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J. Allen Shriver
Examiner
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JAS
July 29, 2003


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7/30/03